

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
MEMPHIS DIVISION

IN RE REGIONS MORGAN KEEGAN
SECURITIES, DERIVATIVE and ERISA
LITIGATION

No. 2:09-md-02009-SHM

This Document Relates to:

*In re Helios Closed-End Fund Derivative
Litigation*, No. 2:11-cv-02935-SMH-dvk

**MOTION TO DISMISS PLAINTIFFS' VERIFIED AMENDED SHAREHOLDER
DERIVATIVE COMPLAINT BY MORGAN ASSET MANAGEMENT, INC.
AND THE INDIVIDUAL DEFENDANTS**

Defendants Morgan Asset Management, Inc. ("MAM"), Allen B. Morgan, Jr., J. Kenneth Alderman, Thomas R. Gamble, Charles D. Maxwell, Brian B. Sullivan, Joseph C. Weller, J. Thompson Weller, Michele F. Wood, James C. Kelsoe, Jr., and David H. Tannehill (collectively, the "Individual Defendants") file this Motion to Dismiss Plaintiffs' Verified Amended Shareholder Derivative Complaint ("Amended Complaint").

Plaintiffs' claims fail as a matter of law. Maryland law does not recognize either a stand-alone claim for breach of fiduciary duty or a claim for unjust enrichment against MAM under the allegations pleaded in this action. Even assuming such claims could be asserted under Maryland law, Plaintiffs' claims would fail because MAM and its officers, directors, and employees advised the Funds pursuant to Investment Advisory Agreements ("Advisory Agreements") with each Fund, which contained broad limitations on liability. The Funds' respective Articles of Incorporation contained similar provisions limiting the liability of those Individual Defendants who served as officers and directors of the Funds.

Moreover, to the extent Plaintiffs attempt to plead fraud, the Amended Complaint fails to include factual allegations sufficient to satisfy the heightened pleading requirements of Rule 9(b) of the Federal Rules of Civil Procedure, or even to plead the elements of a claim under Maryland law. Without such allegations, Plaintiffs' claims fail as a matter of law.

Finally, certain of Plaintiffs' claims against MAM and the Individual Defendants concerning the RMH, RSF, and RMA Funds, and against certain of the Individual Defendants concerning the RHY Fund, are untimely by virtue of Maryland's three-year statute of limitations applicable to civil actions. Plaintiffs' own allegations, particularly when considered in connection with the Funds' offering documents and other public filings, demonstrate that Plaintiffs were on notice of their claims by January 2007 at the latest, more than three years prior to the filing of this lawsuit.

Because Plaintiffs already have filed multiple complaints making these very same allegations, and because leave to amend would be futile, the Amended Complaint should be dismissed with prejudice. A memorandum of law and the Declaration of Britt K. Latham are submitted in support of this motion.

DATED this 13th day of January 2012.

Respectfully submitted,

BASS, BERRY & SIMS PLC

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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2012, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following and/or served the following via U.S. Mail:

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